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CLEARINGHOUSE RULE 96-130

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. SECTION 1 of Clearinghouse Rule 96-130 creates s. RL 30.02 (4m) which contains a definition of “in plain view.” Although the introductory clause to s. RL 30.02 specifies that the proposed definition and current definitions relate to chs. RL 30 to 35, it is apparent from the introductory clause to s. RL 30.02 (4m) that the definition is created only for the purpose of defining the term as used in s. 167.31 (4) (a) 4., Stats. An explanation of the statutory requirement that a firearm in possession of a private security person must be in plain view would be more appropriately addressed in s. RL 34.01, specifying conditions relating to carrying a firearm. Specifically, it is recommended that s. RL 34.01 (3) be amended to authorize a private security person to carry a firearm only if the firearm is “in plain view” and to explain the “plain view” requirement. Item 5. a. of these comments suggests language for a provision in s. RL 34.01 (3) that will explain the meaning of the phrase “in plain view.”

b. The requirement in s. RL 30.02 (4m) (b) that, to be “in plain view,” a firearm must be “at all times within the control of the private security person and not accessible to other occupants in the vehicle” is contrary to any reasonable interpretation of the meaning of the phrase “in plain view.” If there is statutory authority for this requirement, the requirement should be placed in a substantive provision rather than a definition.

c. SECTION 2 of Clearinghouse Rule 96-130 repeals and recreates s. RL 30.02 (7). This treatment is inappropriate where current provisions are unchanged or where minor changes can be accomplished by renumbering, amending or creating specific provisions. The current s. RL 30.02 (7) could be renumbered s. RL 30.02 (7) (a) and par. (b) could then be created.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The definition of “in plain view” in s. RL 30.02 (4m) is awkward; it is difficult to read and understand. The following alternative addresses the awkwardness and ambiguity of the proposed definition while retaining its principal features:

(4m) A firearm is in “plain view,” as required under s. 167.31 (4)

(a) 4., Stats., if all of the following apply:

(a) Either it or a holster that it is easily visible to others.

(b) It is not wholly or partially concealed by the uniform of the private security person in possession of the firearm.

Consideration should be given to deleting par. (b), above, since it is superfluous in light of the requirement in par. (a).

b. The definition of “on duty” in s. RL 30.02 (7), as revised in SECTION 2 of Clearing-house Rule 96-130, is awkward and ambiguous. In particular, par. (b) attempts to exclude the application of par. (a) 1. to the circumstance of a private security person traveling to and from work or a training program but does not exclude the application of par. (a) 2. to this circumstance. Thus, regardless of whether a private security person is entitled to compensation during the time of travel to and from work or training, the private security person is “on duty” whenever he or she “acts or purports to be acting as a private detective or private security person.” The vagueness of the phrase “acts or purports to act” in par. (a) 2. makes it difficult to determine under the revised definition when a private security person is on or off duty.

Also, the reference in par. (b) should be to “par. (a) 1.” if only that subdivision is being cross-referenced or to “par. (a)” if all of that paragraph is being cross-referenced.